

AMENDED IN SENATE JUNE 28, 2004
AMENDED IN SENATE JUNE 23, 2004
AMENDED IN ASSEMBLY JULY 3, 2003
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AMENDED IN ASSEMBLY MAY 5, 2003
AMENDED IN ASSEMBLY MAY 1, 2003
AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Leno

February 18, 2003

An act to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of the Government Code, relating to county recorders, making an appropriations therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would enact the Electronic Recording Delivery Act of 2004, to authorize a county recorder, upon approval by resolution of the board

of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the delivery and recording of specified digitized and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. It would require participating counties to pay for the direct cost of regulation and oversight by the Attorney General, and authorize those counties to impose fees to cover those costs. It would authorize the Attorney General to charge a fee directly to a vendor seeking approval of ~~software~~ hardware, software, firmware, and other services as part of an electronic recording delivery system. Fees paid to the Attorney General under these provisions would be deposited in an unspecified account, which would be created in the Special Deposit Fund and continuously appropriated to the Attorney General for these purposes.

This bill would authorize the Attorney General or a district attorney or city prosecutor to seek specified civil remedies.

The Attorney General would be required to evaluate the electronic recording delivery systems, and report to both houses of the Legislature on or before June 30, 2009.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to enact
2 legislation to develop a system to permit the electronic delivery,
3 recording, and return of records that are instruments of
4 reconveyance, substitutions of trustees, or assignments of deeds of
5 trust.

6 (b) It is the further intent of the Legislature that electronic
7 recording delivery systems be a voluntary county option subject
8 to regulation to promote security and uniformity, reduce costs, and
9 deter real estate fraud.

10 SEC. 2. Article 6 (commencing with Section 27390) is added
11 to Chapter 6 of Division 2 of Title 3 of the Government Code, to
12 read:

13



Article 6. Electronic Recording Delivery Act of 2004

27390. (a) This article shall be known and may be cited as the Electronic Recording Delivery Act of 2004.

(b) For the purposes of this article, the following definitions shall apply:

(1) “Authorized submitter” means a title insurer, an underwritten title company, an entity of local, state, or federal government, or an institutional lender, as defined in subdivision (j) of Section 50003 of the Financial Code, or the agents or employees of any of these, who has entered into a contract with a county recorder pursuant to subdivision (b) of Section 27391, and ~~contracted with a vendor~~ *use hardware, software, or firmware* approved by the Attorney General pursuant to subdivision (b) of Section 27392.

(2) “Computer security auditor” means computer security personnel hired to perform an independent audit on the electronic recording delivery system, approved pursuant to Section 27394 and not disqualified pursuant to Section 27395. The computer security auditor shall be independent of the county recorder and the authorized submitter and shall not be the same contractor hired to establish or participate in a county’s electronic recording delivery system or in the authorized submitter’s portion of that system.

(3) “Digital electronic record” means a record that is created, generated, sent, communicated, or stored by electronic means, but not created in original paper form.

(4) “Digitized electronic record” means a scanned image of the original paper document.

(5) “Electronic recording delivery system” means a system designed to receive for recording, and to return to the party requesting recording, digitized or digital electronic records.

(6) “Security testing” means an independent security audit by a computer security auditor, including, but not limited to, attempts to penetrate an electronic recording delivery system for the purpose of testing the security of that system.

(7) “Source code” means a program or set of programs, readable and maintainable by humans, translated or interpreted into a form that the electronic recording delivery system can execute.

(8) “System certification” means the issuance of a confirmation letter regarding an electronic recording delivery system by the Attorney General, as described in Section 27392.

27391. (a) Upon approval by resolution of the board of supervisors and system certification by the Attorney General, a county recorder may establish an electronic recording delivery system.

(b) (1) Upon system certification, a county recorder may enter into a contract with a title insurer, an underwritten title company, an entity of local, state, or federal government, or an institutional lender, as defined in subdivision (j) of Section 50003 of the Financial Code, to facilitate the delivery for recording, and return to the party requesting recording, of a digital electronic record, or a digitized electronic record, that is an instrument of reconveyance, substitution of trustee, or assignment of a deed of trust.

(2) Any party entering into a contract with a county recorder pursuant to paragraph (1) shall ~~contract with a vendor~~ use hardware, software, or firmware approved by the Attorney General that does not allow “secure access,” as defined by the Attorney General in subdivision (f) of Section 27395, by authorized submitters to the electronic recording delivery system in implementing that contract.

(c) If a county recorder elects to utilize an electronic recording delivery system pursuant to this article, he or she may refuse to enter into a contract with any party or may terminate or suspend access to a system if the county recorder deems it necessary to protect the public interest, protect the integrity the of public records, or protect property owners from financial harm. A county recorder may also terminate or suspend access to a system in the event a party commits a substantive breach of the contract or does not comply with this article or the regulations adopted pursuant to this article.

(d) *No cause of action or liability against the county recorder or any other government entity shall occur or arise from the decision of the county recorder to refuse to contract with any party or to terminate or deny access of any party to the system.*

(e) A county recorder may require a party electronically submitting records to mail a copy of recorded electronic document

1 to the address specified in the instructions for mailing upon
2 completion of recording.

3 ~~(e) No cause of action or liability against the county recorder~~
4 ~~or any other government entity shall occur or arise from the~~
5 ~~decision of the county recorder to refuse to contract with any party~~
6 ~~or to terminate or deny access of any party to the system.~~

7 (f) *When a signature is required to be accompanied by a*
8 *notary's seal or stamp, that requirement is satisfied if the electronic*
9 *signature of the notary contains all of the following:*

10 (1) *The name of the notary.*

11 (2) *The words "Notary Public."*

12 (3) *The name of the county where the bond and oath of office*
13 *of the notary are filed.*

14 (4) *The sequential identification number assigned to the*
15 *notary, if any.*

16 (5) *The sequential identification number assigned to the*
17 *manufacturer or vendor of the notary's physical or electronic seal,*
18 *if any.*

19 (g) *In addition to, and notwithstanding Section 27361.5, a*
20 *county recorder, with approval by resolution of the board of*
21 *supervisors, may require, but need not be limited to, the following*
22 *index information on the first page or sheet of a digital or digitized*
23 *electronic document presented for recording:*

24 (1) *The parcel identifier number of the real estate.*

25 (2) *The address of the real estate, to the extent available.*

26 (3) *The name of the authorized submitter presenting the*
27 *document for recording.*

28 (4) *The name of the authorized requestor of a document for*
29 *recording.*

30 (5) *The marital, corporate, partnership, or other similar legal*
31 *status of a person who is a party to the document.*

32 (6) *The date of the document.*

33 (7) *The number of pages or sheets contained in the record,*
34 *including the first page or sheet.*

35 (8) *The transmittal information to identify the sender and*
36 *provide recording record information.*

37 (9) *If the document is a grant deed, quitclaim deed, or deed of*
38 *trust, evidence that the grantor has given informed consent to the*
39 *use of an electronic document.*

1 27392. (a) No electronic recording delivery system may
2 become operational without system certification by the Attorney
3 General. The certification shall affirm that the proposed county
4 system conforms to this article and any regulations adopted
5 pursuant to this article, that security testing has confirmed that the
6 system is secure and that the proposed operating procedures are
7 sufficient to assure the continuing security and lawful operation of
8 that system. The certification may include any agreements
9 between the county recorder and the Attorney General as to the
10 operation of the system, including, but not limited to, the nature
11 and frequency of computer security audits. Certification may be
12 withdrawn for good cause.

13 (b) The Attorney General shall approve ~~vendors offering~~
14 ~~software~~ hardware, software, firmware, and other services for
15 electronic recording delivery systems pursuant to regulations
16 adopted as described in paragraph (7) of subdivision (b) of Section
17 27393.

18 27393. (a) The Attorney General shall, in consultation with
19 the County Recorders Association of California and the California
20 District Attorneys Association, adopt regulations for the review,
21 approval, and oversight of electronic recording delivery systems.
22 Other interested parties may be consulted. Regulations shall be
23 adopted pursuant to the Administrative Procedure Act (Chapter
24 3.5 (commencing with Section 11340) of Part 1 of Division 3). The
25 regulations shall comply with Section 12168.7.

26 (b) The regulations adopted pursuant to subdivision (a) may
27 include, but need not be limited to, all of the following:

28 (1) Establishment of baseline technological and procedural
29 specifications for electronic recording delivery systems.

30 (2) Requirements for security, capacity, reliability, and
31 uniformity.

32 (3) Requirements as to the nature and frequency of computer
33 security audits.

34 (4) A detailed and uniform definition of the term ‘source code’
35 consistent with paragraph (7) of subdivision (b) of Section 27390,
36 and as used in this article, and applicable to each county’s
37 electronic recording delivery system.

38 (5) Requirements for placement of a copy of the operating
39 system, source code, compilers, and all related software associated



1 with each county's electronic recording delivery system in an
2 approved escrow facility prior to that system's first use.

3 (6) Requirements for ensuring approval by the Attorney
4 General of substantive modifications to an operating system,
5 compilers, related software, or source code.

6 (7) Procedures for approval of ~~vendors offering software~~
7 *hardware, software, firmware*, and other services for electronic
8 recording delivery systems.

9 (8) Requirements for system certification and for oversight of
10 approved systems.

11 (9) Requirements for fingerprinting and criminal records
12 checks required by Section 27395, including a list of employment
13 positions or classifications subject to criminal records checks and
14 including a definition of "secure access" as specified in
15 subdivision (f) of that section.

16 (10) Requirements for uniform index information that shall be
17 included in every digitized or digital electronic record.

18 (11) Provisions to protect proprietary information accessed
19 pursuant to subdivision (e) of Section 27394 from public
20 disclosure.

21 (c) The Attorney General may promulgate any other
22 regulations necessary to fulfill his or her obligations under this
23 article.

24 (d) An electronic recording delivery system shall be subject to
25 local inspection and review by the Attorney General. The Attorney
26 General shall furnish a statement of any relevant findings
27 associated with a local inspection to the county recorder of a
28 county participating in the inspected electronic recording delivery
29 system, to the district attorney, and to all technology vendors
30 associated with that system.

31 27394. (a) To be eligible to establish an electronic recording
32 delivery system, a county recorder shall contract with, and obtain
33 a report from, a computer security auditor selected from a list of
34 computer security auditors approved by the Attorney General.

35 (b) The Attorney General shall approve computer security
36 auditors on the basis of significant experience in the evaluation and
37 analysis of Internet security design, the conduct of security testing
38 procedures, and specific experience performing Internet
39 penetration studies. The Attorney General shall complete the

1 approval of security auditors within 90 days of a request from a
2 county recorder. The list shall be a public record.

3 (c) An electronic recording delivery system shall be audited, at
4 least once during the first year of operation and periodically
5 thereafter, as set forth in regulation and in the system certification,
6 by a computer security auditor. The computer security auditor
7 shall conduct security testing of the electronic recording delivery
8 system. The reports of the computer security auditor shall include,
9 but not be limited to, all of the following considerations:

10 (1) Safety and security of the system, including the
11 vulnerability of the electronic recording delivery system to fraud
12 or penetration.

13 (2) Results of testing of the system's protections against fraud
14 or intrusion, including security testing and penetration studies.

15 ~~(3) Recommendations as to the need for~~ *If an auditor finds a*
16 *security breach, or the imminent threat of a security breach, but is*
17 *unable to find the source of that breach in the electronic recording*
18 *system, then the auditor may recommend security testing of an*
19 *authorized submitter's system, pursuant to subdivision (e).*

20 (4) Recommendations for any additional precautions needed to
21 ensure that the system is secure.

22 (d) Upon completion, the reports and any response to any
23 recommendations shall be transmitted to the board of supervisors,
24 the county recorder, the county district attorney, and the Attorney
25 General. *These entities are authorized to take appropriate action*
26 *based upon the recommendations and findings of the auditor.*

27 (e) (1) A computer security auditor shall have access to any
28 aspect of an electronic recording delivery system, in any form
29 requested. Computer security auditor access shall include, but not
30 be limited to, permission for a thorough examination of source
31 code and the associated approved escrow facility, and necessary
32 authorization and assistance for a penetration study of that system.

33 (2) If it is necessary to extend security testing to any portion of
34 an authorized submitter's system, an authorized submitter may
35 employ, at its own expense, a computer security auditor for this
36 aspect of security testing. The security auditor shall meet all the
37 requirements of this section and shall complete and submit all
38 security testing and reports as required by this article and any
39 regulations adopted pursuant to this article.



(f) If the county recorder, a computer security auditor, a district attorney for a county participating in the electronic recording delivery system, or the Attorney General reasonably believes that an electronic recording delivery system is vulnerable to fraud or intrusion, the county recorder, the board of supervisors, the district attorney, and the Attorney General shall be immediately notified. The county recorder shall immediately take the necessary steps to guard against any compromise of the electronic recording delivery system, including, if necessary, the suspension of an authorized submitter or of the electronic recording delivery system.

27395. (a) No person shall be a computer security auditor or be granted secure access to an electronic recording delivery system if he or she has been convicted of a felony, has been convicted of a misdemeanor related to theft, fraud, or a crime of moral turpitude, or if he or she has pending criminal charges for any of these crimes. A plea of guilty or no contest, a verdict resulting in conviction, or the forfeiture of bail, shall be a conviction within the meaning of this section, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(b) All persons entrusted with secure access to an electronic recording delivery system shall submit fingerprints to the Department of Justice for a criminal records check according to regulations adopted pursuant to Section 27393.

(c) Once the Department of Justice has ascertained the criminal history information, it shall forward written notification of criminal convictions or pending criminal charges, or both, to the division of the office of Attorney General charged with oversight duties regarding this article. The Attorney General shall request subsequent arrest notification service from the Department of Justice pursuant to Section 11105.2 of the Penal Code for all persons subject to a criminal records check pursuant to this section.

(d) The Attorney General shall deliver written notification of an individual's ineligibility for access to an electronic recording delivery system to the individual, his or her known employer, the computer security auditor, and the county recorder.

(e) The Department of Justice may charge a fee sufficient to cover its costs under this section.

(f) The Attorney General shall define "secure access" for purposes of this section by regulation and by agreement with the county recorder in the system certification. *The definition of*

1 “secure access” shall in no way limit the electronic recording
2 delivery system from receiving digital records pursuant to
3 paragraph (1) of subdivision (b) of Section 27391.

4 (g) Authorized submitters, as defined in paragraph (1) of
5 subdivision (b) of Section 27390, are not subject to the
6 requirements of this section unless it is necessary for them to have
7 secure access to the electronic recording delivery system.

8 27396. (a) The Attorney General shall monitor the security
9 of electronic recording delivery systems statewide, in close
10 cooperation with county recorders and public prosecutors. In the
11 event of an emergency involving multiple fraudulent transactions
12 linked to one county’s use of an electronic recording delivery
13 system, the Attorney General may order the suspension of
14 electronic recording delivery systems in any county or in multiple
15 counties, if necessary to protect the security of the system, for a
16 period of up to seven court days. The Attorney General may seek
17 an order from the superior court if it is necessary to extend this
18 order.

19 (b) (1) The Attorney General, a district attorney, or a city
20 prosecutor may bring an action in the name of the people of the
21 state seeking declaratory or injunctive relief, restitution for
22 damages or economic loss, rescission, or other equitable relief
23 pertaining to any alleged violation of this article or regulations
24 adopted pursuant to this article. Injunctive relief may include, but
25 is not limited to, an order suspending a party from participation in
26 the electronic recording delivery system, on a temporary or
27 permanent basis.

28 (2) Nothing in this subdivision shall be construed to prevent the
29 Attorney General, a district attorney, or a city prosecutor from
30 seeking legal or equitable relief under any other provision of law.

31 27397. (a) A county establishing an electronic recording
32 delivery system under this article shall pay for the direct cost of
33 regulation and oversight by the Attorney General.

34 (b) The Attorney General may charge a fee directly to a vendor
35 seeking approval of ~~software~~ hardware, software, firmware, and
36 other services as part of an electronic recording delivery system.
37 The fee shall not exceed the reasonable costs of approving
38 ~~software~~ hardware, software, firmware, or other services for
39 vendors.

1 (c) In order to pay costs under this section, a county may do any
2 of the following:

3 (1) Impose a fee in an amount up to and including one dollar
4 (\$1) for each instrument that is recorded by the county. This fee
5 may, at the county's discretion, be limited to instruments that are
6 recorded pursuant to the electronic recording delivery system.

7 (2) Impose a fee upon any vendor seeking approval of software
8 and other services as part of an electronic recording delivery
9 system.

10 (3) Impose a fee upon any person seeking to contract as an
11 authorized submitter.

12 (d) The total fees assessed by a county recorder pursuant to this
13 section may not exceed the reasonable total costs of the electronic
14 recording delivery system, the review and approval of vendors and
15 potential authorized submitters, security testing as required by this
16 article and the regulations of the Attorney General, and
17 reimbursement to the Attorney General for regulation and
18 oversight of the electronic recording delivery system.

19 (e) Fees paid to the Attorney General pursuant to subdivisions
20 (a) and (b) shall be deposited in the ____ Account, which is hereby
21 created in the Special Deposit Fund, and, notwithstanding Section
22 13340, is continuously appropriated, without regard to fiscal
23 years, to the Attorney General for the costs described in those
24 subdivisions.

25 27398. The Attorney General shall conduct an evaluation of
26 electronic recording delivery systems authorized by this article,
27 and report to both houses of the Legislature on or before June 30,
28 2009.

29 (a) The evaluation shall include an analysis of costs, cost
30 savings, security and real estate fraud prevention, and
31 recommendations as to improvements and possible expansion of
32 the provisions of this article.

33 (b) (1) It is the intent of the Legislature that the electronic
34 delivery, recording, and return of digital and digitized electronic
35 records pursuant to this article be limited to an instrument of
36 reconveyance, a substitution of trustee, or an assignment of deed
37 of trust, because these documents pose less risk of real estate fraud
38 loss to property owners and financial institutions than other
39 documents affecting the right, title, or interest in real property.

1 (2) Therefore, the evaluation conducted under this section shall
2 also include a study of the feasibility of expanding the provisions
3 of this article to cover the delivery, recording, and return of other
4 digital and digitized electronic records.

5 27399. (a) The authority granted in this article is in addition
6 to any other authority or obligation under state or federal law.

7 (b) Nothing in this article shall be construed to repeal or affect
8 Section 27279, 27279.1, 27279.2, 27297.6, 27387.1, or 27399.7.

9 SEC. 3. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety
11 within the meaning of Article IV of the Constitution and shall go
12 into immediate effect. The facts constituting the necessity are:

13 In order that county recorders may alleviate fiscal constraints by
14 implementing electronic recording delivery systems at the earliest
15 possible time, it is necessary for this act to take effect immediately.

